

WESTERN AUSTRALIA.



ANNO QUARTO

GEORGII QUINTI REGIS,

XV.

No. 15 of 1913.

AN ACT to amend the Criminal Code and to facilitate the enactment of a compilation of the Criminal Code Act, 1902, and its amendments, and to provide for the inclusion in the compilation of certain statutory provisions of the Criminal Law, and for other relative purposes.

[Assented to 15th December, 1913.]

WHEREAS the Legislative Council and Legislative Assembly, Preamble.
by resolutions passed on the twenty-second day of December, nineteen hundred and eleven, directed the compilation with its amendments of the Criminal Code Act, 1902, and such compilation has been duly made in accordance with the Statutes Compilation Act, 1905: And whereas it is desirable before the enactment of such compilation to amend the Criminal Code (hereinafter called the Code) and to provide for the inclusion in the said compilation of such amendments and also of certain statutory provisions of the Criminal law: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

- Short title. 1. This Act may be cited as the *Criminal Code Amendment Act, 1913.*
- Amendment of Chapter XIV., Schedule. 2. The amendments indicated in the First Schedule to this Act are hereby made in Chapter XIV. of the Code.
- Amendment of Section 197. See 8 Edw. vii., c. 45. 3. Section one hundred and ninety-seven of the Code is hereby amended by the insertion in the first and also in the second paragraph, before the word "daughter," of the words "mother or," and before the word "descendant" of the words "ancestress or."
- Amendment of Section 198. *Ibid.* 4. Section one hundred and ninety-eight of the Code is hereby amended by the insertion in the first and also in the second paragraph, after the word "father," of the words "or son," and after the word "ancestor" of the words "or descendant."
- Further amendment of Sections 197 and 198. 5. The following paragraph is added to section one hundred and ninety-seven and also to section one hundred and ninety-eight of the Code:—
The mention of any relationship herein shall include any such relationship, whether natural only or legitimate.
- Amendment of Section 206. 6. Section two hundred and six of the Code is repealed, and the following section is substituted, that is to say:—
- Common nuisance. 206. (1.) Any person who without lawful justification or excuse (the proof of which lies on him) does any act or omits to discharge any legal duty which act or omission endangers the lives, safety, health or property of the public or by which act or omission the comfort of the public is interfered with or the public are obstructed in the exercise or enjoyment of any common right, is guilty of a misdemeanour, which is called a common nuisance, and is liable to imprisonment for one year.
(2.) It is the duty of every person having any property under his control to do such acts with respect thereto as are necessary to prevent any such danger, interference, or obstruction as aforesaid arising therefrom.
- Repeal of portion of Section 296. 7. The second paragraph of section two hundred and ninety-six of the Code is hereby repealed.
- Repeal of portion of Section 297. 8. Section two hundred and ninety-seven of the Code is hereby amended by the deletion of the words "within or (being a subject of His Majesty) without His Majesty's dominions," and also of the last paragraph.
- Amendment of Section 387. 9. Section three hundred and eighty-seven of the Code is hereby amended—

- (a) By the deletion of the second paragraph, and the substitution of the following:—

Any person (being such a mortgagor as aforesaid) who shall destroy, break, injure, kill, or otherwise damage any mortgaged goods with intent to deprive the mortgagee of his security or any part thereof, or to defeat or anywise impair the security, is guilty of a misdemeanour and liable to imprisonment with hard labour for two years.

- (b) By the insertion of the words “and any fixtures” after the words “progeny of any animals,” in the third paragraph.

10. Section four hundred and fifty-one of the Code is hereby amended by the deletion of the second paragraph. Repeal of portion of Section 451.
11. Section four hundred and fifty-two of the Code is hereby amended by the deletion of the words “within or (being a subject of His Majesty) without His Majesty’s dominions” and also of the last paragraph. Repeal of portion of Section 452.
12. Section four hundred and ninety-three of the Code is hereby amended by the deletion of the word “and,” at the end of paragraph (b) of subsection (3), and the substitution of the word “or.” Amendment of Section 493.
13. Section five hundred and twenty-one of the Code is hereby amended by the insertion after the word “composition,” wherever it occurs, of the words “assignment or arrangement,” and by the insertion between the word “with” and the words “his creditors” of the words “or for the benefit of,” and by the insertion of the words “or insolvent” between the word “bankrupt” and the word “debtors.” Amendment of Section 521.
14. Section five hundred and twenty-six of the Code is hereby amended by the deletion of the word “make,” in the fourth line, and the substitution of the words “cause or enable.” Amendment of Section 526.
15. Section five hundred and thirty-five of the Code is hereby amended by the deletion of the last paragraph. Repeal of portion of Section 535.
16. Section six hundred and seven of the Code is hereby amended by the excision of the word “an” before “accused person” in the last paragraph, and by the insertion in place thereof of the words “the Crown or the.” Amendment of Section 607.
17. The last subsection of section six hundred and fifty-three C (653c) is hereby repealed. Amendment of Section 653c.

Amendment of Sections 661 and 662.

18. Sections six hundred and sixty-one and six hundred and sixty-two are hereby amended by the insertion after the words "Circuit Court," in each section, of the words "or Court of General or Quarter Sessions."

Insertion of new sections after Section 666.

19. A new section is hereby inserted in Chapter LXVI. in the Code after section six hundred and sixty-six, as follows:—

Enforcement of order for payment of money.

666A. Any judgment or order by any Court (including a court of summary jurisdiction) under this Code for payment of any fine or costs or any other sum of money whatsoever by any person or corporation may, without prejudice to any other method of enforcement, be entered up as a judgment of the Supreme Court on the order of a Judge, and shall be enforceable with costs accordingly.

Insertion of a new chapter after Chapter LXVII.

20. The following chapter is hereby inserted in the Code after Chapter LXVII. :—

CHAPTER LXVIIA.—*Effect of conviction as regards prisoners' property.*

Forfeitures abolished. See 33 and 34 Vict., c. 23, s. 1. Curator may be appointed of prisoner's estate. See *Ibid.*, s. 9.

666B. Forfeitures, escheats, attainders and corruptions of blood on account of crime or conviction stand abolished.

666C. (1.) Whilst any person heretofore or hereafter sentenced to a term of imprisonment or detention exceeding twelve months or to detention during the Governor's pleasure is under and subject to such sentence the Court may, on the application of the Comptroller-General of Prisons, appoint a curator of such prisoner's estate, and may at any time remove such curator, and, if deemed expedient, appoint another person in his place.

Estate to vest in curator. See *Ibid.*, s. 10.

(2.) Subject to any order or direction of the Court, the prisoner's real and personal estate shall vest in the curator, and such vesting shall be deemed a transmission within the meaning of the Transfer of Land Act, 1893, and may be registered under that Act accordingly, subject to such and the like conditions as apply in the case of transmissions of the lands of a deceased person; provided that nothing herein shall affect the prisoner's right to dispose of his estate whilst there is no curator thereof.

Powers of curator.

(3.) The curator shall have power—

(a.) to pay and discharge out of the said estate all such debts and liabilities as are justly payable out of the same;

See *Ibid.*, s. 16.

(b.) to make and pay out of the said estate all such allowances for the support or maintenance of any wife

or

or child or reputed wife or child of the prisoner or of any other relative or reputed relative of such prisoner dependent upon him for support or for the benefit of the prisoner himself if and while he shall be lawfully at large under any license, as to such curator shall seem fit;

- (c.) to manage the said estate and take such steps and do such things for the preservation and advantage thereof (including the carrying on of any business) as shall be approved by the Court;
- (d.) to lease, sell or otherwise dispose of any part of the said estate whenever he shall judge it expedient so to do;
- (e.) to sue or defend any action on behalf of the prisoner;
- (f.) to exercise such powers in respect of the said estate as an administrator may exercise in respect of the estate of his intestate:

Provided that no real estate shall be leased for a longer term than one year or sold or mortgaged except pursuant to an order of the Court.

(4.) The Court may require any curator to give security or may make any appointment subject to security being given, and may impose any such conditions, restrictions and limitations on the appointment as may appear expedient, and may allow the curator such remuneration as shall be just.

Security.

(5.) Notwithstanding anything herein no property acquired by a prisoner whilst he shall be lawfully at large under any license shall vest in any curator, but such prisoner shall be entitled thereto without interference.

Prisoner may retain property acquired whilst on license.

(6.) A curator shall be entitled at any time to apply to the Court for advice and directions as to the performance of his duties and the exercise of his powers, and any person may summon the curator before the Court to show cause why he should not do or submit to any act, matter or thing in his character as such curator, and the Court may make such order as shall be just.

Curator may apply to Court for directions.

(7.) In this chapter the word "Court" means the Supreme Court or any Judge thereof, and the word "prisoner" includes any person under and subject to such sentence as aforesaid though he be not in actual custody, and the provisions of this chapter shall extend to any person who is undergoing or subject to a term of imprisonment by way of commuted sentence as if he had been originally sentenced to such term.

Interpretation.

666b. When any person for whose estate a curator has been appointed under this chapter shall die or be made bankrupt or shall cease to be a prisoner the powers, authorities and discretions of any curator of his estate shall cease, and the estate

Vesting of property on death, bankruptcy, or liberation of prisoner.

and See Ibid., s. 7.

and all accretions thereto shall, subject and without prejudice to the administration and application thereof under and according to this chapter, vest in the person who would be entitled thereto if no curator had been appointed: Provided that the curator may do such things as may be necessary for the care and preservation of the estate or any part thereof until it can be handed over to the person entitled thereto.

Curator to
account.
See Ibid., ss. 19
and 29.

666E. A curator shall be accountable to the person entitled to the estate that was vested in him in the same manner in which a trustee is accountable to his *cestui que trust*, without prejudice, however, to the administration and application of the estate under this chapter, and on his authority coming to an end the curator shall pass his accounts before the Master of the Supreme Court in manner to be prescribed by rules which the Judges of the Supreme Court or a majority of them are hereby empowered to make: Provided that a curator shall not be answerable to any person for any property which shall not actually have come to his hands by virtue of this Chapter nor for any loss or damage which may happen through any mere omission or non-feasance on his part.

Amendment of
Section 669.

21. Subsection three of section six hundred and sixty-nine of the Code is hereby amended by the insertion after "verdict" of the words "or which may lawfully be passed for the offence of which the appellant stands convicted."

Amendment of
Section 671D.

22. Section six hundred and seventy-one D (671D) of the Code is hereby amended by the addition to the third paragraph of the words:—"and any such extension may be ordered although the application for the same is not made until after the expiration of the time appointed."

Amendment of
Section 671 L

23. Section six hundred and seventy-one L (671L) of the Code is hereby amended by the addition of a definition, as follows:—

(3.) The expression "Judge who tried him," used in relation to any convicted appellant, means the Judge or Chairman of the Court from the conviction before which such appellant desires to appeal.

Insertion of
new section to
stand as 672.

24. The following section is inserted in the Code to stand as section six hundred and seventy-two thereof:—

Writs of error
and motions for
new trials in
criminal cases
abolished.
See 7 Edw. VII.,
c. 23, s. 20.

672. Proceedings in error in cases to which any of the preceding provisions of this chapter apply and any powers or practice which may now exist in the Supreme Court in respect of motions for new trials or the granting thereof in such cases other than such as are provided for in this chapter are hereby abolished.

25. In section six hundred and seventy-three of the Code all words after the word "conditioned" are repealed, and the following words are substituted:—"to keep the peace and be of good behaviour for a period from the date of the sentence equal to the term of the sentence or for any less period. Upon complaint being made on oath before any Justice of any breach of the condition of the recognizance, such Justice may issue his warrant for the apprehension of the offender, and for his detention in custody until he can be brought before a Justice to be dealt with hereunder, and any Justice, on such offender being brought before him, may, on due proof of such breach, declare the recognizance forfeited, and commit the offender to prison to serve, as under the sentence aforesaid, any unexpired balance of the term of such sentence, which, for this purpose, shall be deemed to be revived.

Amendment of Section 673.

26. A new section is hereby inserted in the Code in Chapter LXXI., after section six hundred and eighty-six, as follows:—

Insertion of new section in Chapter LXXI.

686A. It shall be lawful for any court before which any person shall have been convicted (whether on indictment or summarily) upon the application of any person aggrieved, and immediately after the conviction to award any sum of money, to be paid by the person convicted to the person aggrieved, by way of satisfaction or compensation for any loss of property suffered or expenses incurred by the applicant through or by means of the said offence, but the sum awarded shall not exceed in the case of a summary conviction, twenty-five pounds, and in other cases, one hundred pounds: Provided that such an order may be varied, annulled or appealed against as if it were an order for restitution, and that it shall be deemed to be annulled if the conviction is quashed on appeal.

Power to award compensation to person aggrieved by offence.
See 33 and 34 Vict., c. 23, s. 4.

27. The following section is hereby inserted in the Code after section seven hundred and four of the Code.

Insertion of new section after Section 704.

704A. No person shall in any civil or criminal proceeding be excused from answering any question put either *viva voce* or by interrogatory or from making any discovery of documents on the ground that the answer or discovery may criminate or tend to criminate him in respect of any offence against Chapter XXXV. or the Secret Commissions Act, 1905: Provided that his answer shall not be admissible in evidence against him in any criminal proceeding other than a prosecution for perjury.

Incriminating answers and discovery.
See 1905, No. 10, Sec. 8 (com.)

28. Section seven hundred and thirteen of the Code is hereby amended by the addition thereto of the words, "The Judges or a majority of them may also, subject to this Code, make general rules for regulating the practice and procedure of the said Court in its criminal jurisdiction."

Amendment of Section 713.

Amendment of
Section 714.

29. The word "thereof" is hereby substituted for the words "of the Supreme Court," in paragraph (d) of subsection (1) of section seven hundred and fourteen of the Code.

37 Vict., No. 8,
repealed.

30. The Third Schedule of the Criminal Code Act, 1902, is hereby amended by the inclusion therein, as a repealed statute of the Act hereinafter mentioned, that is to say—

37 Vict., No. 8.—"An Act for adopting and applying (with certain modifications and exceptions) an Act of Parliament, intituled 'An Act to abolish Forfeitures for Treason and Felony, and to otherwise amend the law relating thereto,' in the administration of Justice in the Colony of Western Australia," and by the insertion (opposite the mention of the said Act, under the heading of "Extent of Repeal") of the words "The Whole."

Amendments
effected by this
Act and the Secret
Commissions Act
may be inserted
in the Criminal
Code Act Compila-
tion Act.

31. (1.) In Appendix A of the Bill for the Statute to enact the compilation aforesaid, it shall be lawful to insert as repealed Statutes the Secret Commissions Act, 1905, and this Act (except this section), and to insert in the compiled Act in Appendix B of such Bill the amendments effected by this Act, and also the provisions of the Secret Commissions Act, 1905 (except section nineteen).

(2.) The said provisions of the Secret Commissions Act, 1905, shall be inserted in Division IV. of Part VI. of the Compilation, and the chapter containing them shall be headed "Corruption of agents, trustees and others in whom confidence is reposed."

(3.) The insertions hereby authorised may appear in the Bill on its introduction, and may be made with such and the like consequential and other alterations in, additions to or omissions from the text as are permitted in compilations made under the Statutes Compilation Act, 1905, and that Act shall apply to the Bill with such insertions as if the matter inserted had been duly and properly inserted in the original compilation.

SCHEDULE.

Section 2.

AMENDMENTS IN CHAPTER XIV.

Section.	Amendments.
94	Substitute "misdemeanour" for "crime," and "one year" for "two years."
95	Substitute "offence" for "crime," and "six months" for "two years."
96	Substitute "offence" for "misdemeanour," and "three" for "six," and "twenty" for "fifty."
97	Substitute "offence" for "misdemeanour," "six months" for "one year," and "fifty" for "two hundred."
98	Substitute "nine months" for "one year," and "one hundred" for "two hundred."
99	Substitute "nine months" for "one year," and "one hundred" for "two hundred."
100	Substitute "two" for "six," and "twenty" for "one hundred."
102	Substitute "nine months" for "one year," and "one hundred" for "two hundred."
103	Substitute "twenty-five" for "one hundred."
105	Substitute "offence" for "misdemeanour," "three months" for "one year," and "twenty-five" for "two hundred."
106	Substitute "offence" for "misdemeanour," "six months" for "one year," and "twenty-five" for "two hundred."
107	Substitute "offence" for "misdemeanour," and "six months" for "two years."
108	Substitute "misdemeanour" for "crime," and "one year" for "three years."
109	Substitute "offence" for "misdemeanour," and "six months" for "two years."
110	Substitute "misdemeanour" for "crime," and "one year" for "three years."
111	Substitute "offence" for "misdemeanour," and "six months" for "two years."
112	Substitute "offence" for "misdemeanour," and "six months" for "two years."
113	Substitute "nine months" for "one year," and "one hundred" for "two hundred."
114	Substitute "misdemeanour" for "crime," and "one year" for "three years."
115	Substitute "twenty" for "fifty."